

because it does not provide a market for trading that type of security, then there appears to be no basis in the Act for authorizing or requiring that SRO to participate in that national market system.

Finally, the proposed amendment expands the types of persons to whom a party may disseminate proprietary information pertaining to quotations and transactions in its market as an exception to the requirement of the Plan that makes OPRA the exclusive channel for the dissemination of this information. Under Section V(c)(iii) of the current Plan, a party may disseminate its proprietary information outside of the OPRA System to its members for display on terminals used to enter or transmit orders or quotes to the party's market and to other parties, provided that those members who have access to a party's proprietary information must also have equivalent access to consolidated information provided by OPRA, and provided further that a party may not disseminate proprietary information outside of OPRA on any more timely basis than the same information is provided to OPRA. The proposed amendment to the Plan would allow a party to disseminate its proprietary information outside of the OPRA System to any person, provided that the requirements of the current Plan pertaining to equivalent access to consolidated data provided by OPRA and to the timeliness of providing data to OPRA would continue to apply. This proposed change reflects past experience with the electronic trading system of the ISE and the anticipated expanded use of electronic trading systems by other parties, all of which necessarily involve the dissemination of proprietary information over systems that are separate from the OPRA System. OPRA has come to recognize that persons in addition to members of a party who enter quotes or orders into a party's electronic market may benefit from having access to the party's electronic network. The proposed amendment is intended to facilitate this, while at the same time assuring that all persons who have access to a party's proprietary information would also have equivalent access to consolidated market information provided by OPRA.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed Plan amendment, as modified by Amendments No. 1 and 2, including whether the proposal and Amendments No. 1 and 2 are consistent with the Act. Specifically, the Commission requests

comment on OPRA's proposal that the first \$5 million of OPRA's capacity-related costs in any year would be allocated based on the relative trading volume of each of the parties, while OPRA's costs above \$5 million, as proposed in Capacity Guideline No. 7, would be allocated by the ISCA, and, in particular, whether \$5 million appears to be an appropriate ceiling before the ISCA may begin allocating OPRA's capacity-related costs. Furthermore, as part of the ISCA's limitations on authority in proposed Capacity Guideline No. 5, the ISCA may not authorize a modification to the OPRA System that, together with other capacity increases previously authorized by the ISCA, represents an increase in the total capacity of the System in excess of 15,000 messages per second over the immediately preceding twelve months unless at least 75% of the parties consent to such an increase. The Commission seeks comment on whether such a limitation is appropriate, and, if so, whether the 15,000 mps limitation imposed on the ISCA is reasonable, whether OPRA should use a higher threshold, and whether commenters recommend using a threshold percentage based on OPRA's capacity of the previous year instead of a specified amount.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposal and Amendments No. 1 and 2 that are filed with the Commission, and all written communications relating to the proposal and Amendments No. 1 and 2 between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-2003-01 and should be submitted by December 19, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment, as amended by Amendments No. 1 and 2, is sufficient under the Act and the rules and regulations thereunder for temporary approval of not more than 120 days.²⁴

²⁴ In approving this proposed OPRA Plan amendment, the Commission has considered its

Specifically, the Commission believes that the proposed OPRA Plan amendment, which would revise the manner in which OPRA engages in capacity planning and the allocation of system capacity among the exchanges that are parties to the Plan, is sufficient under Section 11A of the Act²⁵ and Rule 11Aa3-2 thereunder²⁶ for temporary approval not to exceed 120 days in that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Specifically, the Commission believes that OPRA's proposal to require each party to the Plan to independently project the capacity it would need and to confidentially submit requests for capacity based on such projections to the ISCA is designed to eliminate joint action by the OPRA participants in determining the amount of total capacity procured and the allocation of such capacity. The Commission notes that the proposal would require that the ISCA maintain these individual capacity projections and requests in confidence, and not use such confidential, capacity-related information in any of its business activities that may result in the information being made available to any of the parties of the Plan, or to use such information in any manner that is inconsistent with its obligation to hold the information in confidence. Furthermore, the proposed Capacity Guidelines would require the ISCA to provide the Commission with a written description of its internal safeguards and procedures to ensure compliance with the Plan's confidentiality requirements prior to the time the ISCA first exercises its authority under the Plan. The Commission believes that these requirements provide additional assurance that each exchange's non-public business information would remain segregated would not be made available to its competitors. Furthermore, the Commission emphasizes that neither the Plan nor the Capacity Guidelines should be construed in any manner that would permit individual exchange capacity projections or requests or other confidential, capacity-related information to be shared with the other parties to the Plan.

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78k-1.

²⁶ 17 CFR 240.11Aa3-2.